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May 27, 1997

VIA FACSIMILE AND
CERTIFIED MAIL NO. P 332-325-601
RETURN RECEIPT REQUESTEDMr. David S. Guzy, Chief
Rules and Procedures Staff
Royalty Management Program
Minerals Management Service
Post Office Box 25165
MS 3101
Denver, CO 80225-0165RE: Notice of Proposed Rulemaking, Delegation of Royalty Management Functions
to States, 62 Fed. Reg. 19967, dated April 24, 1997.

Dear Mr. Guzy:

On behalf of the below-named companies, who are owners of Federal leases, the following comments are hereby submitted in response to the MMS proposed rulemaking dated April 24, 1997, concerning "Delegation of Royalty Management Functions to States" as set forth in 62 Fed. Reg. 19967.

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (FOGRSFA) amended the Federal Oil and Gas Royalty Management Act (FOGRMA) for leases on Federal lands and the Outer Continental Shelf (OCS), but did not affect leases on Indian lands. FOGRMA Section 205 (30 U.S.C. § 1735) provided for the delegation of certain royalty functions by the Secretary to the States. Since the passage of FOGRMA in 1982, there has not been a legislative review or reform of royalty management practices. Prior to the passage of FOGRMA, the Commission on Fiscal Responsibility, known as the Linowes Commission, reviewed the role of the Federal government and the States in royalty practices. Specifically, the Commission considered which responsibilities and functions should be performed by a Federal bureau as opposed to the States. The Commission stated:

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In the Commission's judgment, the Federal government must at the very least, retain its oversight responsibilities in those instances where States and Indian Tribes take over certain royalty management functions through cooperative agreements with the Federal government. The Federal government must retain the ability to ensure that the mineral royalties due the United States Treasury and the Indian Tribes are paid in full. Such oversight, however, could take the form of periodic reviews of a State's or Tribe's overall performance in those cases where the State or Tribe has demonstrated its competence to perform the necessary functions.

The States have several distinct interests in minerals management and royalty accounting. Consequently, for many States, minerals management is a substantial governmental activity. Indeed, in all the States with major energy mineral resources, interest in better management of revenues is now very high. Many of the States are actively working to improve the accountability of their own collection programs, and they are cooperating in unprecedented ways to make the best use of the talents and resources of each. In the past year, several important multistate organizations have greatly increased their attention to mineral revenue issues. *Linowes Commission Report*, at 117-118.

State involvement in the Federal government's royalty management system has resulted from their tangible and immediate interest in that system's adequacy. The FOGRSFA has established a more clear and certain framework for the Federal government, States and companies to manage the payment and collection of Federal royalties.

Delegation Should Be Used to Simplify and Streamline

FOGRSFA requires the Secretary of the Interior to simplify and streamline royalty management requirements and practices and encourages the Secretary to collect royalties rapidly and cost-effectively. FOGRSFA was enacted to serve the goals of providing simplicity, certainty and clarity in the laws that govern the collection and payment of Federal royalties. The Act was further intended to accomplish across-the-board fairness statutorily for matters related to the payment of royalties. Finally, the Act was intended to streamline the regulatory process and bolster the goal of reinventing government. It is upon these principles that the proposed regulations should rest.

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Congress pushed for delegation of royalty management functions to the States as a means of accomplishing these objectives. In the words of Senator Thomas, "[d]elegating royalty collection functions to the States is a true power transfer that will streamline the royalty collection process, reduce the costs and make the government more efficient to operate." *S. Report 104-260, Senate Committee on Energy and Natural Resources, statement of Craig Thomas*. Despite Congress' clear intent that delegation of authority to the States be used to streamline the royalty collection process, these proposed regulations in no way attempt to achieve that purpose. If anything, these regulations do just the opposite. For example, as stated in the proposed rule¹, the current information collection on Delegation of Authority to States estimated that the annual burden on industry would increase by a total of 200,000 hours for 4,500 payors and reporters. Even at the understated cost of \$25.00 an hour, the annual, additional cost burden is estimated at \$5,000,000. The burden on multiple state operators may be considerably more than that of smaller operators working in only one state.

Industry Should Be Allowed to Participate

It is essential that a three-way partnership exist with the States, Federal lessees and the Federal government formulating and implementing an effective royalty management program. All three participants must be allowed meaningful participation throughout the process or the key principles of FOGRSFA -- simplicity, certainty, and clarity in the royalty management process -- will not be achieved. Indeed common sense would dictate that all three parties must be participants at the stage where regulations have not yet been finalized. Those vitally affected by the process must be allowed an opportunity to provide input. Cooperation among the MMS, delegated States and affected lessees is critical to the entire process. The proposed regulation states that industry was updated by MMS on MMS' progress on the delegation regulation. *62 Fed. Reg. 19967-19968 (April 24, 1997)*. We take issue with this statement. Industry was not invited nor permitted to participate in the formation of the central ideas or language of the subject regulation. Industry disagrees with how the delegation issue has been handled to this point, because industry has not been allowed to participate in this process in any meaningful way.

An advisory committee of members from States, MMS and industry to participate in the delegation process would alleviate these potential issues. The advisory committee would be responsible for providing recommendations on standards and procedures that must be required for performance of delegable functions in an effective and efficient manner. MMS suggests the formation of an advisory committee comprised only of States receiving delegation and MMS representatives to provide advice and recommendations on the standards and procedures required for delegable functions. Compliance with the Federal Advisory

¹ Under the Paperwork Reduction Act discussion. *62 Fed. Reg. 19977-19978 (April 24, 1997)*.

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Committee Act (FACA) requires that industry be included in the development of these standards and procedures for delegation.

The States seeking delegation will be required to operate the royalty management system in compliance with all Federal laws, regulations, policies, and guidelines to maintain a uniform, consistent application of Federal requirements to minimize such burdens on lessees. While the Federal government will oversee this delegation, industry's input is also necessary to determine whether the delegated functions are being performed in a manner consistent with the goals of FOGRSFA.

Lack of Standards

FOGRSFA required that regulations and standards be promulgated within one year of passage.

"After consultation with State authorities, the Secretary shall by rule promulgate, within 12 months after the date of enactment of this section, standards and regulations pertaining to the authorities and responsibilities to be delegated under Subsection (a) ...[s]uch standards and regulations shall be designed to provide reasonable assurance that a uniform and effective royalty management system will prevail among the States." 30 U.S.C. § 1735. (*Emphasis added.*)

The current proposed rulemaking contains no such standards. Even the concepts, highlights or outline of those standards are noticeably absent from the proposal. It is impossible for industry or anyone to effectively and meaningfully comment on the proposed rule as a result of this absence. The regulations and standards (which by statute must be promulgated by rule) go together hand in glove, and one without the other does not comport with the congressional intent of fairness and simplification. Therefore, we request that the comment period be extended until after the MMS presents the standards for public review.

It should also be noted that the "standards" to be adopted by MMS on or before August 13, 1997, have not been discussed with industry members². The MMS "discussed the concepts of the proposed regulation with the State[s]" (62 Fed.Reg. 19968 (April 24, 1997)), but has not allowed industry any meaningful participation in this important part of the rulemaking. Indeed, the meetings scheduled by MMS to give an outline of the standards are set for a date after the close of this comment period. The Federal Government, States, and all citizens

² MMS hosted two general FOGRSFA outreach meetings in the fall of 1996 and a series of meetings to industry in January 1997. Attached are the MMS handouts at the January, 1997 industry meeting. No other information has been provided.

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would be better served by and benefit from industry's active and meaningful participation in the process.

Potential for Additional Burdens on Industry

A central concern of the industry is the valuation of oil for royalty purposes. In the proposed rule, MMS is to retain this function which would alleviate potential conflict. As a practical matter, we are also concerned with possible duplication that might result from the splitting of enforcement procedures between the States and the MMS. To alleviate this concern, procedures must be extremely explicit in discriminating between what authority lies within the state and within MMS to ensure uniform and consistent enforcement.

The proposed regulations increase the regulatory framework to allow a broader scope of functions to be delegated to a State. Within this scope lies the potential for great uncertainty about delegation authority and procedure between the States and the MMS. Under the proposed rule, the MMS may not delegate the function of collecting money. However, if the MMS collects the funds, but has no corresponding data for verification, the lessee may incur additional, duplicative burdens for reporting. The potential for confusion in cases of incorrect payment is readily apparent. A condition of FOGRSFA is that any approved delegation must not unreasonably increase industry burden. 30 U.S.C. 1735. As previously mentioned, the MMS estimates that the annual burden and cost to industry under the proposed rules will increase significantly. The basis for this burden is not clearly articulated with any specificity and the below-named companies wish to be informed as to any additional costs imposed by implementation of these regulations.

Thus, the engendering of potential additional burdens, risks or problems to the industry necessitates a closer look at the proposed regulatory framework.

Other Comments

Of specific concern is whether or not a grace period will exist prior to a Delegation Agreement taking effect. Such a grace period may, under certain circumstances, be vital to the process, to allow all of industry to properly gear up to work with the States on functions previously handled by the MMS or BLM. Industry may need time to adjust their computerized systems to the changes or to work with a delegated state to ensure a smooth transition. Without such a transition time, the certainty and clarity meant to be achieved by FOGRSFA will likely be lost. A six-month grace period may allow sufficient time for both industry and the delegated State to implement systems to comply with the changes. Further, the proposed rule allows for a 90-day period of readjustment in the event that States elect to terminate their delegation. 62 Fed. Reg. 19977 (April 24, 1997). Our greatest concern in this area is whether this would allow enough time to readjust our reporting system for

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compliance.

Further, industry needs to have an active participatory role in the delegation rulemaking process. To participate fully in the process, industry must have early access to delegation proposals to ascertain the impact on itself. A mechanism should be established that allows industry early access to these documents. Without such participation, industry will not be able to determine whether the proposal could inadvertently create an "unreasonable burden" on the royalty management process and on industry in particular.

Once industry has had time to study a state's delegation proposal, they should be allowed input into the process of determining whether a state's proposal is proper or acceptable. FOGRSFA provides that affected parties, such as a Federal lessee, be allowed to participate in the process to the extent a delegation creates an "unreasonable burden" on it. Industry needs the ability to work with the MMS and States prior to the hearing on any proposal for the system to function effectively and efficiently. As an affiliated party, industry must be allowed to participate in the hearing and, if necessary, present evidence as to any potential "unreasonable burden" of a proposed delegation. If those industry comments are disregarded by the MMS, what is industry's recourse? At present, no mechanism exists, short of retreating to the court system to file an injunction.

As part of the delegation process, Delegation Agreements should be public records. It is unclear in these proposed rules whether that is the case. For proper functioning of the Federal Royalty Management Program, MMS, the States and industry must all be allowed participation in the Delegation Agreement negotiations. Without this triumvirate of participants, the program may result in confusion, uncertainty and inefficiency.

The proposed rule allows a designated payor (designee) or lessee to participate in the administrative appeals process. However, to allow a designee to bind a lessee in an administrative appeal, without the lessee's consent or input, is abhorrent to the notion of across-the-board fairness. Designees should not be allowed to bind lessees without lessee's consent or input.

Finally, designees should not be allowed to enter into tolling agreements to extend the statute of limitations. Under no circumstances would industry be agreeable to allowing anyone to act as our representative without our consent or substantial input. This concern also exists with respect to the ability of a designee to bind lessees to refunds, interest payment, etc. Due process requires that lessees have substantial input in these types of proceedings, recognizing that the designee will also have input and potentially the underlying records.

In conclusion, we appreciate your consideration of our comments and our role in the rulemaking process. We look forward to participating with the MMS and the States in the

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implementation of the delegation process to further develop an effective and efficient royalty management process.

Sincerely,

DOMESTIC PETROLEUM COUNCIL
INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA
INDEPENDENT PETROLEUM ASSOCIATION OF THE MOUNTAIN STATES
MID-CONTINENT OIL AND GAS ASSOCIATION
ROCKY MOUNTAIN OIL AND GAS ASSOCIATION

AMOCO PRODUCTION COMPANY
BURLINGTON RESOURCES OIL AND GAS COMPANY
CHEVRON U.S.A. PRODUCTION COMPANY
COASTAL STATES MANAGEMENT CORPORATION
CONOCO, INC.
DEVON ENERGY CORPORATION
DUGAN PRODUCTION CORP.
ENRON OIL & GAS COMPANY
FINA OIL AND CHEMICAL COMPANY
MARATHON OIL COMPANY
MURPHY EXPLORATION & PRODUCTION COMPANY
ORYX ENERGY COMPANY
OXY U.S.A., INC.
TEXACO EXPLORATION AND PRODUCTION INC.
THE LOUISIANA LAND AND EXPLORATION COMPANY
VASTAR RESOURCES

By: 
Patricia Dunmire Bragg